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10/622,409	07/18/2003	Angela Temple	14892-004001	4188
26231	7590	11/19/2007	EXAMINER	
FISH & RICHARDSON P.C. P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			AUGHENBAUGH, WALTER	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/622,409	TEMPLE ET AL.
	Examiner	Art Unit
	Walter B. Aughenbaugh	1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 04 September 2007.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-11 and 17-22 is/are pending in the application.

4a) Of the above claim(s) 17-22 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-11 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) Paper No(s)/Mail Date. _____
 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____ 5) Notice of Informal Patent Application
 6) Other: _____

DETAILED ACTION

Acknowledgement of Applicant's Amendments

1. The amendments made in claims 1 and 2 in the Amendment filed on September 4, 2007 (Amdt. E) have been received and considered by Examiner.

WITHDRAWN OBJECTION

2. The objection to claim 2 made of record in paragraph 4 of the previous Office Action mailed June 4, 2007 has been withdrawn due to Applicant's amendment in claim 2 in Amdt. E.

WITHDRAWN REJECTIONS

3. All rejections made of record in the previous Office Action mailed June 4, 2007 have been withdrawn due to Applicant's amendment in claim 1 in Amdt. E.

NEW OBJECTION

4. The amendment filed September 4, 2007 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the recitation "having no adhesive material applied thereto" added to claim 1. See 35 USC § 112, first paragraph, rejection of claim 1 made of record below.

Applicant is required to cancel the new matter in the reply to this Office Action.

NEW REJECTIONS

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it

pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The recitation "having no adhesive material applied thereto" is not supported in the specification as originally filed because the condition where the wipe "ha[s] no adhesive material applied thereto" is not described in the specification as a feature of the invention. MPEP 2173.05(i).

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention

8. Claims 2 and 3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The language added to claim 2 in Amdt. E renders the claim indefinite because the exact structure that Applicant intends to recite for the product in its final form cannot be ascertained. The recitation "when the one opening is in an unopened state" makes the exact structure that Applicant intends to recite for the product in its final form unclear because "in an unopened state" seems contradictory to "opening": if an opening is "in an unopened state", it would not seem that the opening could be called an "opening" if it is "unopened". The word "when" further contributes to the indefiniteness of the claim because "when" indicates that the final product actually is not required to be in "an unopened state": if the product is not required to be in an unopened state, any recitation regarding the structure of the product in that "unopened state" is

not a positive recitation because the product in its final form need not have that structure.

Furthermore, it seems contradictory to state that a finger could "more easily [be] insert[ed] into the one cavity" when the opening is in "an unopened state" (as opposed to if it is in an opened state, and is therefore actually an opening). As follows from the discussion above, the language makes it unclear if Applicant intends to recite that the wipe actually have an opening.

In regard to claim 3, claim 3 depends upon claim 2, which recites "when the one opening is in an unopened state", and claim 3 recites that "the opening [is] at one end", so it is unclear how the wipe would have an opening when it is "in an unopened state". Clarification/appropriate amendment of claim 2 would most likely also overcome this basis of rejection regarding claim 3 (claim 3 further contributes to the lack of clarity as to whether Applicant intends to claim that the wipe has an opening or not).

Claim Rejections - 35 USC § 102

9. Claims 1-3, 5-7 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Rosenfield (U.S. Patent No. 3,306,288).

Rosenfield teaches a finger bandage, item 1 (that corresponds to the claimed "eye wipe", Fig. 1: see end of text of rejection of claim 1 for discussion explaining why the finger bandage corresponds to an "eye wipe"), comprising a single material (fabric, col. 2, line 65-col. 3, line 5) forming one cavity with one opening in its entirety (Fig. 1), the material configured to encircle a perimeter of a finger (Fig. 1) and shaped, with a finger inserted in the cavity, to fit in a region of an eye near its tear duct because the tip of a finger is shaped to fit in a region of an eye near its tear duct, and the tip of the finger bandage, item 1, of Rosenfield is shaped similarly to the tip of a finger (Fig. 1), so the tip of finger bandage, item 1, is shaped to fit in a region of an eye near its

tear duct (col. 2, lines 25-40, col. 1, lines 9-18 and Fig. 1). The material of Rosenfield (fabric) has no adhesive material applied thereto (see entire document). The material (fabric) is adapted to remove biological matter released from the eye at a position at or near the tear duct because it is a woven or knit fabric (col. 2, line 65-col. 3, line 5). The finger bandage, item 1, of Rosenfield can be considered to be an “eye wipe” when it is used as an eye wipe. Furthermore, while the following statement is not required to show anticipation of claim 1, it is very reasonable to expect that one wearing the finger bandage of Benson because one’s finger has a cut on it, say one’s pointer finger, would wipe one’s eye with the finger covered with the bandage out of habit, without considering the fact that there is a bandage on that finger (perhaps because the person forgot that there is a bandage on the finger, or that person is not concerned that the bandage would harm the person’s eye [that person would be careful not to injure the eye, regardless of what object is used to remove the biological matter]), at which point the bandage would be used as an “eye wipe”. Even furthermore, the bandage of Rosenfield would be considered to be an “eye wipe” even if it never used as an eye wipe because at any point the owner/user of the bandage could use it as such.

In regard to claim 2, the opening of Rosenfield (technically, the end of the material at the opening [since claim 2 recites that the opening “includes a first edge portion and a second edge portion”- an opening is empty space, so an opening would not have “edge portion[s]”]) can be divided into two edge portions- where one half of the edge at the end of the material at the opening is one edge portion, and the other half is the other edge portion. The recitation “the first and second edge portions being unaligned when the one opening is in an unopened state, thereby enabling a user to more easily insert a finger into the one cavity” would be met when the fabric

of Rosenfield happens to be situated such that the opening is closed and the two edges of the edge portions identified above are not perfectly (or any degree less than perfectly) “[aligned”].

In regard to claim 3, Rosenfield teaches that the cavity is substantially tubular with the opening at one end and tapering at the other end (Fig. 1).

In regard to claim 5, the fabric of Rosenfield is a unitary piece of material because the material consists of fabric (col. 2, line 65-col. 3, line 5).

In regard to claim 6, the fabric of Rosenfield is operable to absorb moisture because it is a woven or knit fabric (col. 2, line 65-col. 3, line 5).

In regard to claim 7, the fabric of Rosenfield is circular in cross section (and in shape) since it surrounds a finger (Fig. 1).

In regard to claim 9, an eye irritant solution is substantially absent from the material (fabric) of Rosenfield because Rosenfield does not teach that the material of Rosenfield comprises an eye irritant solution (see entire document).

Claim Rejections - 35 USC § 103

10. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenfield (U.S. Patent No. 3,306,288) in view of Benson (U.S. Patent No. 6,139,514).

Rosenfield teaches the finger bandage comprising the fabric as discussed above in regard to claim 1.

Rosenfield fails to teach that the material (the fabric) is a non-fibrous material.

Benson, however, teaches a finger bandage, item 10 (that corresponds to the claimed “eye wipe”, Fig. 1: see end of text of rejection of claim 1 for discussion explaining why the finger bandage corresponds to an “eye wipe”), comprising a single material (tubular member of

elastically resilient material, item 12) forming one cavity with one opening in its entirety (col. 2, lines 33-41 and Fig. 1), the material configured to encircle a perimeter of a finger (Fig. 1) and shaped, with a finger inserted in the cavity, to fit in a region of an eye near its tear duct because the tip of a finger is shaped to fit in a region of an eye near its tear duct, and the tip of the finger bandage, item 10, of Benson is shaped similarly to the tip of a finger (Fig. 1), so the tip of finger bandage, item 10, is shaped to fit in a region of an eye near its tear duct. The material (tubular member of elastically resilient material, item 12) is adapted to remove biological matter released from the eye at a position at or near the tear duct since Benson teaches that “[t]he general dry and rough nature of the exterior of the tubular material allows the wearer to perform common tasks requiring a high degree of dexterity” (col. 3, lines 34-36): removing “biological matter released from the eye at a position at or near the tear duct” (as recited by Applicant) is a “common task[] requiring a high degree of dexterity” because a person wants to be careful not to injure one’s eye with one’s finger, an item surrounding the finger, or an item held by the person to remove the biological matter, when removing the biological matter. Examiner notes that the requirement that one be careful to not injure one’s eye when removing the biological matter is not a requirement that a material with any particular degree of softness, etc., be used as the material that would potentially contact the eye when the biological matter is contacted with the material, so the relative softness, etc., of the particular material of Benson is not at issue based on the current language of the claim: any person, as long as that person is careful, and performs this “common task” (Benson’s words) with a sufficiently “high degree of dexterity” (Benson’s words) can “remove biological matter released from the eye” with an object that is not soft, and even potentially dangerous to use around one’s eyes, for example, the end of a pen that is opposite the

point of the pen can be used to “remove biological matter released from the eye” as long as that person is careful. The finger bandage, item 10, of Benson can be considered to be an “eye wipe” when it is used as an eye wipe. Furthermore, while the following statement is not required to show anticipation of claim 1, it is very reasonable to expect that one wearing the finger bandage of Benson because one’s finger has a cut on it, say one’s pointer finger, would wipe one’s eye with the finger covered with the bandage out of habit, without considering the fact that there is a bandage on that finger (perhaps because the person forgot that there is a bandage on the finger, or that person is not concerned that the bandage would harm the person’s eye [again, at least in part, because that person would be careful not to injure the eye, regardless of what object is used to remove the biological matter]), at which point the bandage would be used as an “eye wipe”. Even furthermore, the bandage of Benson would be considered to be an “eye wipe” even if it never used as an eye wipe because at any point the owner/user of the bandage could use it as such.

Since Benson teaches that the elastically resilient material of the tubular member of elastically resilient material, item 12, “may be a woven fabric” (col. 2, lines 36-38), Benson indicates that the elastically resilient material need not be fibrous (need not be a fabric, because it “may be a woven fabric”), so the elastically resilient material of Benson may also be non-fibrous (col. 2, lines 36-38). Fig. 1 also show that the finer bandage has a “tight fitting outer covering” that is not fibrous (compare with “inner soft flexible material” shown in Fig. 1). Benson also teaches that the bandage includes an absorbent pad 22 (col. 2, lines 43-59). Therefore, one of ordinary skill in the art would have recognized to have either replaced the fabric of the bandage of Rosenfield with the non-fibrous material taught by Benson (which is the non-fibrous material

of the tubular member of elastically resilient material that is included within the scope of the teaching of Benson at col. 2, lines 36-38) or to have added the “tight fitting outer covering” of Benson to the bandage of the Rosenfield (where the material of the “tight fitting outer covering”, not the fabric of Rosenfield, would correspond to the claimed “non-fibrous material”), since non-fibrous elastically resilient material is a well known material for use as a layer in a finger bandage, as taught by Benson.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have either replaced the fabric of the bandage of Rosenfield with the non-fibrous material taught by Benson (which is the non-fibrous material of the tubular member of elastically resilient material that is included within the scope of the teaching of Benson at col. 2, lines 36-38) or to have added the “tight fitting outer covering” of Benson to the bandage of the Rosenfield (where the material of the “tight fitting outer covering”, not the fabric of Rosenfield, would correspond to the claimed “non-fibrous material”), since non-fibrous elastically resilient material is a well known material for use as a layer in a finger bandage, as taught by Benson.

II. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenfield (U.S. Patent No. 3,306,288).

Rosenfield teaches the finger bandage as discussed above in regard to claim 1. While Rosenfield fails to explicitly teach that the material (fabric) has a maximum dimension of less than about two inches, Rosenfield teaches that the finger bandage is for a finger (Fig. 1). Since Rosenfield teaches that the finger bandage is for a finger, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have fabricated the fabric such that it is sized such it has a maximum dimension that is approximately equal to the maximum

dimension of the desired length of the bandage, taking into consideration such factors as the size of finger intended to be covered (for instance, if the bandages are for children, one of ordinary skill in the art would necessarily fabricate the material such that it has some length that is less than 2 inches [because some children do not have fingers that are longer than 2 inches]).

12. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenfield (U.S. Patent No. 3,306,288) in view of Wilkman (U.S. Patent No. 6,305,531).

Rosenfield teaches the finger bandage comprising the fabric as discussed above in regard to claim 1.

In regard to claim 10, Rosenfield fails to explicitly teach that the material (fabric) is at least partially saturated with a non-eye irritating solution.

Wilkman, however, discloses wipes that are impregnated with a formulary selected for a particular purpose, such as a cleaning fluid, a baby wipe or an eye makeup remover (col. 1, lines 10-13 and 27-33 and col. 4, lines 9-11 and 19-22). Since Wilkman discloses the use of wipes as a baby wipe and as an eye makeup remover, both of which are necessarily non-eye irritating, and both of which contain cleaning solutions, one of ordinary skill in the art would have recognized to have dipped the finger bandage in a non-eye irritating cleaning solution such as a baby wipe solution or an eye makeup remover solution (therefore to have at least partially [with emphasis] saturated the fabric of Rosenfield, with a non-eye irritating cleaning solution) as taught by Wilkman, prior to attempting to remove biological matter released from the eye" in order to more effectively "remove biological matter released from the eye" while also preventing eye irritation via use of a non-eye irritating cleaning solution.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have to have dipped the finger bandage in a non-eye irritating cleaning solution such as a baby wipe solution or an eye makeup remover solution (therefore to have at least partially [with emphasis] saturated the fabric of Rosenfield with a non-eye irritating cleaning solution) as taught by Wilkman, prior to attempting to remove biological matter released from the eye" in order to more effectively "remove biological matter released from the eye" while also preventing eye irritation via use of a non-eye irritating cleaning solution.

In regard to claim 11, Rosenfield fails to explicitly teach that the material (fabric) is at least partially saturated with a solution operable to remove makeup.

Wilkman, however, discloses wipes that are impregnated with a formulary selected for a particular purpose, such as an eye makeup remover for removing eye makeup (col. 1, lines 10-13 and 27-33 and col. 4, lines 15-22). Since Wilkman discloses the use of wipes as a baby wipe and as an eye makeup remover, both of which are necessarily non-eye irritating, one of ordinary skill in the art would have recognized to have dipped the finger bandage in an eye makeup remover solution (therefore to have at least partially [with emphasis] saturated the material of the fabric of Rosenfield with an eye makeup remover solution) as taught by Wilkman, prior to attempting to remove biological matter released from the eye" and/or eye makeup in order to more effectively "remove biological matter released from the eye" and/or to remove eye makeup while also preventing eye irritation via use of a non-eye irritating cleaning solution.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have dipped the finger bandage in an eye makeup remover solution (therefore to have at least partially [with emphasis] saturated the fabric of Rosenfield with an eye makeup

remover solution) as taught by Wilkman, prior to attempting to remove biological matter released from the eye" and/or to remove eye makeup in order to more effectively "remove biological matter released from the eye" and/or eye makeup while also preventing eye irritation via use of a non-eye irritating cleaning solution.

Response to Arguments

13. Applicant's arguments presented on pages 6-8 of Amdt. E regarding the 35 U.S.C. 102 and 103 rejections of the claims made of record in the previous Office Action are moot due to the withdrawal of the 35 U.S.C. 102 and 103 rejections of the claims made of record in the previous Office Action in this Office Action due to Applicant's amendment in claim 1 in Amdt. E.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is (571) 272-1488. While the examiner sets his work schedule under the Increased Flexitime Policy, he can normally be reached on Monday-Friday from 8:45am to 5:15pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Walter B. Aughenbaugh

11/13/07

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